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Arthur Wiscombe, Vice-Pres.

Louie Galloway, Sec.

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Dry Gulch Irrigation Company

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Capital Stock \$800,000

ROOSEVELT, UTAH

February 26, 1935.

Our system embraces fifty-three thousand acres of fine cultivated land in the heart of the Uintah Basin

Mr. T. H. Humpherys, State Engineer,
State Capitol Bldg.
Salt Lake City, Utah.

Dear Mr. Humpherys:

This letter is in answer to your letter dated February 13th in which you enclosed a copy of a letter dated February 5th received from J. F. Hoyt as your agent on the Montez Creek.

Complying with your expressed wish, I will first answer Mr. Hoyt's letter dated September 10th, 1934 relative to the Montez Creek. As I summarize his letter, he charges the company with having intercepted the flow in the creek which legally belonged to Mr. Bryant during 1934; that though construction along the creek the company had so obstructed the channel that it was impossible for the flow of the creek to ever reach Bryant; that the company refused to cooperate with him in the distribution of the waters, and that as an employee of the company I reflected the attitude of it as being, that as a large company, it can largely, if not entirely, ride over small individual water users like Mr. Bryant.

Without any attempt to go into details, my reply is as follows:

From the standpoint of all practical applications, there was no water available for appropriation in the Montez Creek during 1934. The Dry Gulch Company turned canal water into the west branch of the creek the late fall or early winter of 1933 which was permitted to run during the remaining winter. Not later than February 15th, this water was diverted into the company's Harding lateral and used thereafter for domestic and irrigation purposes which use continued until somewhere near the end of March at which time the company stopped the flow of its canal into the Montez Creek channel.

As soon as the canal water was taken from the creek channel the flow at the company's diversion below immediately dropped too some half c.f.s. or less. This small flow gradually diminished until it was just enough to reach the company diversion point when it was cut out about April 10th. The company positively did not have any water back into its canal after it was cut out at this time to permit the canal to dry for cleaning. The cleaning and construction commenced April 18th, and at this time there was only a trickle flowing, or barely enough to run and keep the holes full. I dare say, that by April 30th the creek was as dry as a desert road, and never again during the entire season was there any water at all in the west branch. In all fairness to Mr. Hoyt, his complaint, as it applies to the interference with the flow of water belonging to Mr. Bryant is absolutely groundless.

The maximum extent for complaint as to the company's construction along this stream bed is that the company caused an earth dam to be thrown across the stream channel as a precaution against the possibility of any water reaching a point in the newly constructed section where it was planned to install a diversion check and gate. At the time this was done, it was only a temporary precaution, the plans were to soon resume construction and to so complete the work that some Uintah River water could be conveyed through this creek channel for a portion of the company's system below for use during 1934. It wasn't long until the trend of the season pointed so clearly to extreme drouth, and also we were unable to secure the equipment we desired for the completion of the contemplated construction so it was delayed for a more favorable time. Since there was no flow at all in the stream, we gave no thought to the removal of this dam until Mr. Bryan's complaint was made, which Mr. Hoyt states was on August 25th. At most it was only a matter of thirty minutes or so to cut this dam, and I assured them at the time that if occasion ever justified steps would immediately be taken to see that no one suffered injury by reason of this dam being in the channel. Positively there was not another thing the men could take exception to in the way of construction. Yes, they asked that the company cut its diversion channel a considerable distance above the spillway at the head of its canal and at the point where it appears the course of the flood water from torrential rains, prior to irrigation, diverges from the channel which the water now follows. I am strongly impressed that it was the discussion of this particular matter almost wholly that has caused them to cloak me with the robes of scarlet. While I tactfully informed them of the true facts which information they seemed not to have, I did not encourage them in this request. Perhaps my robe obscured their vision. The conditions are exactly the same as when the company made its canal in about 1908 and why should the company make any change with conditions exactly the same as when the Bryant rights were initiated.

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Mr. Hoyt's complaint that the company, because of its strength, is willing to take advantage of Mr. Bryant, has no foundation and fact, and such a statement is only a gesture to prejudice you in the matter, or from his imagination being kindled from his appreciation of the fact that the company is fully prepared to defend its rights in the matter. We often hear statements made as facts which are drawn from the imagination.

The gist of my reasoning with Messrs. Hoyt and Bryant on the occasion referred to in Hoyt's first letter, was largely that they were borrowing trouble. As a friend to friend, it seemed foolish to me for them to be chasing up and down a dry creek with not the remotest possibility of them getting a dime's worth of good from such an effort. I did point to facts which I thought should be well-known to both Mr. Hoyt and Mr. Bryant, that in actual practice with full recognition and application being given to all priorities as they exist, that Bryant's priority of 1.38 second feet of water would in any normal season be completely satisfied from the available supply on the east fork and from the return flow below the company's reservoir. I certainly was misunderstood if they thought I even inferred that Bryant's rights should not be recognized. Surely his rights should be recognized. I hold his rights to be just as sacred as my own.

Now in reply to Mr. Hoyt's letter of February 5th, 1934, I have this to say: During the past winter some Uintah River water was impounded in and allowed to flow through the partially constructed Montez Creek reservoir. Our purpose was principally for embankment settlement. It is this impounded water that Mr. Hoyt refers to as coming from the melting ice and snow in front of the dam. The river water was turned into the Montez Creek channel in December, 1934. The stream bed and valley at this time was so thoroughly dried out that it required approximately two weeks for a flow of from 2 to 4 c.f.s. to reach the reservoir some six miles below the point where it was turned out of the company's canal. This fact can easily be established and will serve to show you what the true conditions were with respect to water in this creek during 1934, and what the conditions would now be had not the company turned its canal flow into the stream valley.

In the latter part of January, the company diverted this canal water from the Montez Creek into its Harding lateral for irrigation and domestic purposes. This is the stream that Mr. Hoyt states is being diverted in to the company's Harding lateral and which he judges to be 3 or 4 c.f.s. Mr. Bryant's statement as reported by Mr. Hoyt that the water was flowing on through the Harding lateral

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to waste is positively not true. At the time the statement was made, it was largely being used to fill stock-watering ponds, and since it has been used for both irrigation and domestic purposes.

Except for the placing of possibly a board or two in the spillway structure at the head of the company's Montez Creek diversion lateral, this company has not even touched a spade to its diversion lateral or done any other construction of whatever nature along or adjacent to said Montez Creek channel since a year ago in April. Perhaps I should add that this statement does not apply to the reservoir. Mr. Hoyt's deductions, therefore, that further construction had been made which aggravated the abuses already heaped onto Mr. Bryant is not correct.

Our abstract of the Montez Creek filings shows that Mr. Bryant's right to divert and use water begins April 1st, except for his recent application made in 1927 which specifies March 1st to November 30th as the period of use. It, therefore, seems that Hoyt's complaint is not very well taken until at least Bryant's period of use begins.

You requested a frank statement of the position of the company relating to Mr. Bryant's claim. It was my intention to request the consideration of the Board so as to give you an official statement, but while this arrangement was being made, Mr. Hoyt requested a conference for himself and Mr. Bryant with the company officials. This conference has been arranged for Saturday, March 2nd, so we will delay the official statement of the company until after this conference.

Assuring you that the company stands ready to meet any reasonable demand and that you have our complete confidence in this matter as well as all others, I am,

Yours very truly,

Louise Salloway
Secretary.

lg:il
c.c. J. F. Hoyt,
Ouray, Utah.

